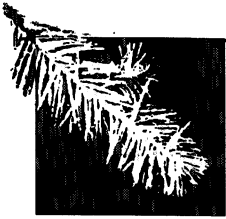


Appendix 6 - No Surprises Policy



Appendix 6. No Surprises Policy

The following is a reproduction of the U.S. Department of the Interior's and U.S. Department of Commerce's 1994 No Surprises Policy.

08/09/94

NO SURPRISES

ASSURING CERTAINTY FOR PRIVATE LANDOWNERS IN ENDANGERED SPECIES ACT HABITAT CONSERVATION PLANNING

"The Committee intends that the Secretary may utilize this provision [on HCPs] to approve conservation plans which provide long-term commitments regarding the conservation of listed as well as unlisted species and long-term assurances to the proponent of the conservation plan that the terms of the plan will be adhered to and that further mitigation requirements will only be imposed in accordance with the terms of the plan. In the event that an unlisted species addressed in an approved conservation plan is subsequently listed pursuant to the Act, no further mitigation requirements should be imposed if the conservation plan addressed the conservation of the species and its habitat as if the species were listed pursuant to the Act."

"It is also recognized that circumstances and information may change over time and that the original plan might need to be revised. To address this situation the Committee expects that any plan approved for a long-term permit will contain a procedure by which the parties will deal with unforeseen circumstances."

H. Rep. No. 835, 97th Cong., 2nd Sess. 30-31 (1982)

PURPOSE:

The purpose of this policy is to provide assurances to non-federal landowners participating in Endangered Species Act Habitat Conservation Planning (HCP) that no additional land restrictions or financial compensation will be required for species adequately covered by a properly functioning HCP in light of unforeseen or extraordinary circumstances.

SUPPLEMENTARY INFORMATION:

The HCP process promotes endangered species conservation and habitat protection within the context of land use or development. Ideally, HCPs contribute to the long-term conservation of federally listed and unlisted species, while providing predictability and economic stability for non-federal landowners.

Species receive a variety of benefits under a properly functioning HCP. Private financial resources supplement limited federal funding, essential habitat areas are often preserved, and comprehensive conservation programs are developed and promptly implemented. Although landowners must ultimately demonstrate that a species has been covered adequately under an HCP, the major benefit from the HCP process from the perspective of the development community is certainty. In exchange for adherence to long-term conservation commitments, an HCP permittee is provided assurance that development may move forward despite the incidental taking of protected species.

Significant development projects often take many years to complete, therefore adequate assurances must be made to the financial and developmental communities that an HCP permit will remain valid for the life of the project. In authorizing the HCP process, Congress recognized that permits of 30 years or more may be necessary to trigger long-term private sector funding and land use commitments for species conservation. Congress also recognized that circumstances may change over time, generating pressure to reconsider the mitigation commitments in an HCP agreement. Often referred to as “unforeseen” or extraordinary circumstances, Congress intended that additional mitigation requirements not be imposed upon an HCP permittee who has fully implemented his or her conservation commitments except as may be provided for under the terms of the HCP itself.

POLICY:

In negotiating “unforeseen circumstances” provisions for HCPs, the FWS shall not require the commitment of additional land or financial compensation beyond the level of mitigation which was otherwise adequately provided for a species under the terms of a properly functioning HCP. Moreover, FWS shall not seek any other form of additional mitigation from an HCP permittee except under extraordinary circumstances.

A. General Assurances Provided to Landowners

- * If additional mitigation measures are subsequently deemed necessary to provide for the conservation of a species that was otherwise adequately covered under the terms of a properly functioning HCP, the primary obligation for such measures shall not rest with the HCP permittee.
- * FWS shall not seek additional mitigation for a species from an HCP permittee where the terms of a properly functioning HCP agreement were designed to provide an overall net benefit for that particular species and contained measurable criteria for the biological success of the HCP which have been or are being met.
- * If extraordinary circumstances warrant the requirement of additional mitigation from an HCP permittee who is in compliance with the HCP's obligations, such mitigation shall limit changes to the original terms of the HCP to the maximum extent possible and shall be limited to modifications within Conserved Habitat areas or to the HCP's operating conservation program for the affected species. Additional mitigation requirements shall not involve the payment of additional compensation or apply to parcels or land available for development under the original terms of the HCP without the consent of the HCP permittee.

B. Determination of Extraordinary Circumstances

- * FWS shall have the burden of demonstrating that such extraordinary circumstances exist, using the best scientific and commercial data available. FWS findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species.
- * In deciding whether any extraordinary circumstances exist which might warrant requiring additional mitigation from an HCP permittee, the FWS shall consider, but not be limited to, the following factors:
 - the size of the current range of the affected species
 - the percentage of range adversely affected by the HCP
 - the percentage of range conserved by the HCP
 - the ecological significance of that portion of the range affected by an HCP
 - the level of knowledge about the affected species and the degree of specificity of the species' conservation program under the HCP
 - whether the HCP was originally designed to provide an overall net benefit to the affected species and contained measurable criteria for assessing the biological success of the HCP
 - whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild

C. Additional Conservation Authority

- * Nothing in this policy shall be construed to limit or constrain FWS or any other governmental agency from taking any additional actions at its own cost with respect to the conservation or enhancement of a species which is included under an HCP.

